



Transformer Inc. address was 2500 E. Springfield Avenue, Spokane, Washington 99202. The current City Parcel Delivery, Inc. address is 708 N. Cook Street, Spokane, Washington, 99202.

3. The Site was owned by Mr. Richard Boyce during transformer repair and recycling operations. Mr. Boyce operated Spokane Transformer Inc. until 1974. Mr. Jerry Overton leased the property from Mr. Boyce and owned and operated Spokane Transformer from 1974 to 1980.

4. The Site was first investigated in 1976 by the Environmental Protection Agency (EPA). Two soil samples were collected from outside of the operations building. Analytical results indicated soils contained 150 and 16,500 milligrams per kilogram or parts per million (ppm) polychlorinated biphenyls (PCBs). These reported PCB concentrations exceed relevant Model Toxics Control Act (MTCA) cleanup levels for both residential and industrial site soil.

5. In 1980, EPA and the Washington Department of Ecology inspected the site. The inspectors noted areas of visibly oil-stained soil.

6. In 1986, EPA collected four soil samples from the vicinity of the building. Laboratory results showed a maximum concentration of 2,400 ppm PCBs. Two of these soil samples, collected from storm drain catch basins in the vicinity of the Site, indicated the presence of PCBs at concentrations of 370 ppm and 14 ppm.

7. In 1987, Ecology and Environment Inc. (E&E), as a contractor to EPA, conducted a sampling program to further characterize the extent of PCB contamination in work areas, floor drains, on-site soil and off-site storm drain. PCBs were detected in on-site soil samples at concentrations of 7 to 7,675 ppm. Four surface scrape samples collected to examine work space

contamination showed results of PCB concentrations of 233 to 415 ppm. Sediment samples from floor drains inside the building contained PCBs at concentrations of 295 to 64,000 ppm. Sediment samples from storm drains in the vicinity of the Site had concentrations ranging from 5 to 681 ppm PCBs. Three samples that were analyzed for PCBs were also tested for chlorinated hydrocarbons. Chlorinated hydrocarbons were detected in all three samples.

8. City Parcel and its owners, Paul and Mary Ann Gisselberg, filed a lawsuit against Richard E. and Mary K. Boyce and Jerry and Jane Doe Overton in December 1994, as a private right of action under MTCA.

9. In March and April 1997, George Maddox & Associates, Inc., working for Mr. Gisselberg, collected soil samples from inside and outside the building, from dry wells, and from an alley on the east side of the building. The on-site soils contained up to 536 ppm PCBs. The soil from a dry well analyzed contained 8230 ppm PCBs. PCB concentrations from soil samples taken from the alley way ranged from 58.9 to 1620 ppm PCBs.

10. In November 1997, George Maddox & Associates, Inc., installed a monitoring well adjacent to a dry well near the southeast portion of the City Parcel property. Soil samples were taken at each 5 feet of drill penetration. The highest PCB concentration of 30.7 ppm was measured at the 10-12 feet depth. A ground water sample taken from this monitoring well contained 2.88 micrograms per liter or parts per billion (ppb) PCBs. This reported concentration is substantially above the 0.1 ppb Method A MTCA cleanup level for ground water. Attributing the PCBs in ground water to turbidity, a second water sample was collected in January 1998 using much longer purging times. This sample did not detect PCBs.

11. In September 1997, Ecology conducted an initial investigation of the Site and an early notice letter dated September 9, 1997 was sent to Mr. Gisselberg, requiring further remedial action.

12. Mr. Gisselberg submitted a proposed independent cleanup plan to Ecology for review under the Voluntary Cleanup Program in February 1998. Ecology provided written review comments on April 21, 1998. Recommendations were made for a site characterization/cleanup plan. Ecology also required that the following immediate actions be undertaken: install a temporary cover over the PCB-contaminated surface soils in the parking lot and in the alleyway; cover a PCB-containing soil pile on site and make arrangements for disposal/treatment of the soils; and inform worker/visitors of the PCB contamination in the area.

13. On October 5, 1998, Ecology sent out a letter to Mr. Gisselberg requiring that the immediate actions listed in the April 21, 1998 letter be completed in 30 days. The parking lot was subsequently covered with gravel; the alleyway was not. The soil pile was covered with plastic but was not disposed or treated; the soil pile is still on site.

14. In August 1998, the Spokane Regional Health District completed the site hazard assessment (SHA) of the City Parcel Property, as required under MTCA. This Site, pursuant to the requirements contained in WAC 173-340-320 and the "Washington Ranking Method Scoring Manual", was given a rank of 2.

15. The lawsuit filed by City Parcel and the Gisselberg's against the Boyce's and the Overton's was tried in Spokane County Superior Court from July 19 – 22, 1999. On September 28, 1999, Judge Linda Thompkins issued Findings of Fact and Conclusions of Law imposing

liability of 37.5% for Mr. Boyce, 37.5% for Mr. Overton, and 25% for Mr. Gisselberg as their contribution for remedial action costs under MTCA. (See City Parcel, et al. v. Overton, et al., Spokane County Superior Court Cause No. 94-2-06779-1.)

16. In certified correspondences dated March 21, 2001, Ecology notified Mr. Gisselberg, Mr. Boyce, and Mr. Overton of the preliminary finding of potential liability and requested comment on those findings. On April 12, 2001, after notice and opportunity for comment, Ecology notified Mr. Gisselberg, Mr. Boyce, and Mr. Overton of their status as “potentially liable persons” (PLPs) under RCW 70.105D.040, for the release of hazardous substances at the City Parcel Site.

17. On July 18, 2001, Ecology initiated negotiations with Mr. Gisselberg, Mr. Boyce, and Mr. Overton (the PLPs) for an Agreed Order that would require completion of a Remedial Investigation/Feasibility Study (RI/FS) for the Site. Ecology ended negotiations in accordance with WAC 173-340-530(6) on September 13, 2001, based on the lack of reasonable progress toward successful negotiations of the Agreed Order.

18. Ecology thereafter conducted a state-funded RI/FS for the Site. RI field activities at the Site were conducted in 2002 by Science Applications International Corporation (SAIC). Results of the 2002 studies are presented and discussed in the November 27, 2002 “Final Remedial Investigation Report For the City Parcel Site” prepared by SAIC. The draft RI report was made available for public comment from January 16 through February 18, 2003. One written comment was received on behalf of Mr. Boyce regarding the necessity of the RI investigations. This comment did not require any changes in the RI Report.

19. Results of the RI confirmed extensive contamination of PCBs in soils in the parking lot and in the alleyway. Additional groundwater sampling was conducted by SAIC in 2003 to verify the 2002 groundwater results. Groundwater results collected in 2002 and additional data collected in 2003 showed no indication of PCB groundwater contamination at the monitoring wells during those sampling events.

20. On August 2003, Ecology formally requested that the City of Spokane install a temporary cover over the contaminated soils in the alleyway which is a City right-of-way. The City subsequently covered the alleyway with gravel.

21. Based on the RI results and other existing site data, Ecology drafted a Feasibility Study (FS) Report in 2004. The report evaluated cleanup technologies that were applicable to the Site. The FS Report was made available for public review and comment from February 26, 2004 through March 26, 2004. No written comments were received during this comment period.

22. Ecology then prepared a Draft Cleanup Action Plan (DCAP) that identified the selected remedial actions for the Site. The DCAP was made available for public review and comment from July 21 through August 19, 2004. No comments were received during the public comment. The Final Cleanup Action Plan (FCAP) was issued in August 2004. The FCAP requires, among other details, the removal of the building, excavation of soils, removal of all drain lines and dry wells, and the removal of the underground storage tank.

23. On November 22, 2004, Ecology sent letters to the PLPs calling for a meeting to discuss the FCAP and its implementation. Mr. Gisselberg, at the request of his legal counsel,

was given a second opportunity to provide comments for an additional thirty-day period, extending from December 1, 2004 to December 31, 2004.

24. On December 28, 2004, Mr. Robert Dunn, Mr. Gisselberg's attorney, provided comments on the remedial actions and proposed alternative actions that include allowing the building to remain on site. The proposed modifications did not meet the minimum requirements of MTCA, and the FCAP was not revised.

25. On May 24, 2005, Ecology met with the PLPs to discuss implementation of the FCAP. At the meeting, Ecology outlined the nature and magnitude of modifications that would be necessary to the cleanup actions identified in the FCAP if the building were to remain.

26. On May 27, 2005, the Attorney General's Office, on behalf of Ecology, sent letters to the PLPs asking their intention to negotiate an Agreed Order or Consent Decree with Ecology to implement the FCAP (as written or with some specific modifications as discussed during the May 24, 2005 meeting). Ecology requested that the PLPs respond to Ecology's letter by July 27, 2005. Mr. Boyce, through his attorney Mr. Todd Reuter, responded that he did not intend to cooperate in the form of payment for any portion of the cleanup costs. A response was also received by Ecology from Mr. Gisselberg's attorney, Mr. Robert Dunn, electing not to negotiate an Agreed Order or Consent Decree with Ecology for implementation of either the FCAP, or the FCAP with specific modifications that would allow the building on Site to remain. Mr. Overton did not send a response.

### III.

#### Ecology Determinations

1. Mr. Boyce is a former owner and operator, Mr. Overton is a former operator, and Mr. Gisselberg is the current owner as defined under Chapter 70.105D.020(12) RCW of a "facility" as defined in Chapter 70.105D.020(4) RCW.
2. The facility is known as the City Parcel Site and is located at 708 N. Cook Street, Spokane, Washington, 99202.
3. The substances found at the facility as described above are "hazardous substances" as defined in Chapter 70.105D.020(7) RCW.
4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined in Chapter 70.105D.020(20) RCW.
5. By letter dated April 12, 2001, Ecology notified Mr. Boyce, Mr. Overton, and Mr. Gisselberg of their status as a "potentially liable person" under Chapter 70.105D.040 RCW after notice and opportunity for comment.
6. Pursuant to Chapters 70.105D.030(1) and 70.105D.050 RCW, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.



#### IV.

##### Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that the PLPs take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. The PLPs shall implement the cleanup action as selected in the Final CAP (Exhibit B, or with specific modifications that allow the building on Site to remain, as set forth in the Scope of Work and Schedule (Exhibit C)), which establishes the required remedial action at the Site.
2. A Restrictive Covenant shall be recorded on the property no later than sixty (60) days after approval of the Remedial Action Plan.
3. Progress reports shall be completed on a monthly basis until completion of the implementation of the cleanup action.
4. A cleanup action report, summarizing all construction activities and changes or modifications, shall be submitted to Ecology no later than sixty (60) days after completion of construction.

V.

Terms and Conditions of Order

1. Definitions

Unless otherwise specified, the definitions set forth in chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notice

Chapter 70.105D.030(2)(a) RCW requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs.

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in Chapter 173-340-550(2) WAC. The PLPs shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly.

Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Name	Ieresita Bala, Site Manager
Address	Washington State Department of Ecology Eastern Regional Office Toxics Cleanup Program 4601 N. Monroe Spokane, WA 99205-1295 Tel: (509) 329-3543 Fax: (509) 329-3572 E-Mail: <a href="mailto:tbal461@ecy.wa.gov">tbal461@ecy.wa.gov</a>

The PLPs shall designate one individual to act as a Project Coordinator and shall inform Ecology of this individual's identity, telephone number and mailing address within fifteen (15) days of receipt of this Order.

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or the PLPs change project coordinator(s), written notification shall be provided to Ecology or the PLPs at least ten (10) calendar days prior to the change.

5. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup.

The PLPs shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. The PLPs shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except when necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the City Parcel Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

Chapter 173-340-400(7)(b)(i) WAC requires that "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

6. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms

of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. When entering the Site under Chapter 70.105D RCW, Ecology shall provide reasonable notice prior to entering the Site unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by the PLPs during an inspection unless doing so would interfere with Ecology's sampling. The PLPs shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Public Participation

An updated public participation plan for the Site is attached as Exhibit D. Ecology shall maintain the responsibility for public participation at the Site. The PLPs shall help coordinate and implement public participation for the Site.

8. Retention of Records

The PLPs shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the PLPs, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution

The PLPs may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. The PLPs are not relieved of any requirement of this Order during the pendency of the dispute and remain responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights

Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from the City Parcel Site.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order the PLPs to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLPs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest the PLPs may have in the Site or any portions thereof, the PLPs shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the PLPs shall notify Ecology of the contemplated transfer.

12. Compliance With Other Applicable Laws

A. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B. of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order and that are known to be applicable at the time this Order becomes effective are binding and enforceable requirements of this Order.

The PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event the PLPs determine that additional permit or approvals addressed

in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.



## VI.

### Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon the PLPs' receipt of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order have been complied with.

## VII.

### Enforcement

1. Pursuant to Chapter 70.105D.050 RCW, this Order may be enforced as follows:
  - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
  - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
  - C. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs will be liable for:
    - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
    - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.
  - D. This Order is not appealable to the Washington Pollution Control Hearings Board.  
  
This Order may be reviewed only as provided under Chapter 70.105D.060 RCW.

Effective date of this Order: August 16, 2005

Gregory Galante  
Ecology Signature